ATTORNEY FOR APPELLANT:

MATTHEW JON McGOVERN
Evansville, Indiana

ATTORNEYS FOR APPELLEES:

THOMAS J. BELCHER
SHANNON L. ROBINSON
Kelley Belcher & Brown
Bloomington, Indiana

IN THE
COURT OF APPEALS OF INDIANA

QUDSIA DAVIS,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 22A01-0606-CV-231
	)	
NEW ALBANY-FLOYD COUNTY CONSOLIDATED SCHOOL CORP.; TRAVIS HAAIRE; STEVE SIPES; and THE BOARD OF SCHOOL TRUSTEES OF NEW ALBANY-FLOYD COUNTY CONSOLIDATED SCHOOL CORP.,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE FLOYD CIRCUIT COURT
The Honorable Michael A. Robbins, Judge
Cause No. 22C01-0312-CT-640

February 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Qudsia Davis filed a complaint against the New Albany-Floyd County Consolidated School Corporation (the School Corporation), Travis Haire, Stephen Sipes, and The Board of School Trustees of New Albany-Floyd County Consolidated School Corporation (the Board) (collectively, the defendants) alleging retaliatory discharge, tortious interference, breach of contract, fraud, and defamation.[1] The defendants filed a motion for summary judgment, which the trial court granted. Davis appeals, raising the following consolidated and restated issue for review: Did the trial court err by entering summary judgment?

We affirm.

Viewed in a light most favorable to Davis, the nonmovant, the facts are as follows. On August 31, 2000, Davis and the School Corporation executed an employment contract (the first contract) pursuant to which Davis was employed as the Director (the director) of the Department of Student Services (the department). Among her duties, Davis served as an expulsion examiner for the School Corporation.[2] According to the terms of the first

[1] Davis also named Dennis Cahill, Tony Bennett, Teresa Perkins, W. Douglas Meredith, Barbara Lamb, Carl Christenson, Jane MacGregor, and Ernest Smith as defendants, but the complaint against each was dismissed.

contract, Davis's: (1) employment began retroactively on July 28, 2000 and was to end on June 22, 2002; (2) title was the director of the department; and (3) compensation was an annual salary of $67,108. Prior to her employment with the School Corporation, Davis was employed as the director of student services at Jeffersonville High School.

In late May 2001, Dennis Cahill, the School Corporation's superintendent, recommended to the Board that the department and the position of its director be eliminated after the conclusion of the 2001-02 school year because of budget concerns. Subsequently, on August 16, 2001, Travis Haire, an assistant principal of New Albany Senior High School (the High School), wrote a letter to Stephen Sipes, the principal of the High School, regarding difficulties he experienced with Davis. Haire informed Sipes that he consulted Davis about how to handle the expulsion of a student, and stated:

> I asked [Davis] should I do the expulsion. She said I could and then we would proceed with the parents' due process to see what the outcome was. I stated to Ms. Davi[s] I was not interested in going to all of this work and to be the "bad" guy if I would lose an expulsion case if she disagreed with me. [Davis] became very upset and began yelling at me over the phone. . . . [S]he was very unprofessional and [] her tone was uncalled for. . . .
>
> [T]his is not the first time or the last time this has happened [sic]. . . .
>
> I am at least asking to be treated as a colleague in a professional manner, not "yelled at" and "talked down to" because of someone else's frustration.

Appellant's Appendix at 90-92. Approximately one week later, Sipes sent Tony Bennett, the School Corporation's assistant superintendent for administration and operations, a

---

[2] An "expulsion examiner" is "any administrator, director, etc.[,] who has the authority to expel a student for reasons" such as, among others, alcohol, drugs, weapon violations, disruptive behavior, and fighting. Indiana Department of Education, http://www.doe.state.in.us/stn/pdf/2004-09-17-Expulsion.pdf (last visited Jan. 22, 2007).

letter relaying Haire's concerns and indicating his "concur[rence] with [Haire's] depiction of the problems he [wa]s experiencing [with Davis]." *Id.* at 86.

On August 29, 2001, Davis signed another contract (the second contract) with the School Corporation. According to the terms of the second contract, Davis's employment began retroactively on July 23, 2001 and was to continue until June 21, 2002, she was to remain employed as the director, and her annual salary was increased to $70,786. For reasons that are not entirely clear, Davis signed a third employment contract the following day, August 30, 2001 (the third contract). According to the terms of the third contract, Davis's beginning and ending dates were July 28, 2000 and June 22, 2002 (dates identical to those agreed upon in the first contract), her position was the director, and her annual salary was $67,172.08.

In early October 2001, Haire sent Bennett a letter recommending that Davis be removed as the expulsion examiner from one student's case. Several weeks later, on October 19, Bennett "reminded Ms. Davis that in the event that the Department . . . was eliminated, her position as Director . . . would also be eliminated[.]" *Id.* at 79. Davis disputes that she was previously informed of this possibility. Thereafter, on November 20, 2001, pursuant to the Board's policy manual (the Manual), Cahill gave Davis written notification of the possibility of the elimination of the department and the position of its director. On December 18, 2001, the Board voted to eliminate the department and Davis's position, which Cahill notified Davis of by letter the following day. Davis continued to serve as the director of the department until her contract expired on June 22, 2002. Davis and the School Corporation later entered into an employment contract (the

fourth contract) pursuant to which Davis served as a counselor during the 2002-03 school year.

On December 17, 2003, Davis filed a complaint against the defendants. On June 14, 2004, the trial court granted Cahill, Bennett, Perkins, Meredith, Lamb, MacGregor, Smith, and Christenson's motion to dismiss. The trial court further granted Haire and Sipes's motion to dismiss, except as to the counts alleging tortious interference with a contract and defamation. Later, on April 24, 2006, the trial court granted the defendants' motion for summary judgment. Davis now appeals. Further facts will be included as necessary.

Davis contends the trial court erred when it entered summary judgment on all five counts in the defendants' favor. In reviewing a trial court's ruling on summary judgment, we do not reweigh the evidence, but construe all facts and reasonable inferences drawn therefrom in the nonmoving party's favor. *Verrall v. Machura*, 810 N.E.2d 1159 (Ind. Ct. App. 2004), *trans. denied*. Summary judgment is appropriate only when the designated evidence demonstrates there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). To be considered genuine, a material issue of fact must be established by sufficient evidence in support of the claimed factual dispute to require a finder of fact to resolve the parties' differing versions of truth at trial. *Barnard v. Saturn Corp.*, 790 N.E.2d 1023 (Ind. Ct. App. 2003), *trans. denied*.

We note the trial court entered findings of fact and conclusions of law. In summary judgment proceedings, special findings, although permissible and valuable, are

neither required nor binding upon appeal. *Cracker Barrel Old Country Store, Inc. v. Town of Plainfield ex rel. Plainfield Plan Comm'n*, 848 N.E.2d 285 (Ind. Ct. App. 2006), *trans. denied*. We are not limited, therefore, to reviewing the trial court's reasons for granting or denying summary judgment, and may affirm the grant of summary judgment upon any theory supported by the designated materials. *Id.*

Davis first contends the trial court erred when it granted the defendants' summary judgment motion on her retaliatory discharge claim. Davis's contention fails for several reasons. In Indiana, one's employment is at-will if there is no definite or ascertainable term of employment. *Purdy v. Wright Tree Serv., Inc.*, 835 N.E.2d 209 (Ind. Ct. App. 2005), *trans. denied*; *McGarrity v. Berlin Metals, Inc.*, 774 N.E.2d 71 (Ind. Ct. App. 2002), *trans. denied*. When employment is at-will, an employer may discharge its employee at any time with or without cause. *Purdy v. Wright Tree Serv., Inc.*, 835 N.E.2d 209. There are, however, several exceptions to the employment-at-will doctrine, one of which is a public policy exception. *Id.* Pursuant to this public policy exception, when an employee is discharged solely for exercising a statutorily conferred right, an exception to the general rule of at-will employment is recognized. *Frampton v. Cent. Ind. Gas Co.*, 297 N.E.2d 425 (Ind. 1973); *Purdy v. Wright Tree Serv., Inc.*, 835 N.E.2d 209. Under such circumstances, courts will recognize a cause of action for retaliatory discharge. *McGarrity v. Berlin Metals, Inc.*, 774 N.E.2d 71.

Davis, however, was not an at-will employee. Pursuant to the third contract, she was to serve as the director for a definite, ascertainable term, *i.e.*, from July 28, 2000 until June 22, 2002. As previously noted, retaliatory discharge constitutes a public policy

exception to the doctrine of employment-at-will. *Purdy v. Wright Tree Serv., Inc.*, 835 N.E.2d 209. Davis fails to explain how an exception to the employment-at-will doctrine applies to the facts of this case, *i.e.*, where she was not an at-will employee.

Even assuming *arguendo* that Davis may bring an action for retaliatory discharge under these circumstances, such a claim would fail. In order to succeed on a retaliatory discharge claim, a plaintiff must demonstrate her discharge was solely in retaliation for the exercise of a statutory right. *Id.* This requirement implicitly necessitates that a defendant demonstrate she was discharged, which is satisfied by a showing that one's employment was terminated. *See, e.g.*, *id.* at 212-13 ("to survive a motion for summary judgment . . ., an employee must . . . present evidence . . . of . . . termination"); *McGarrity v. Berlin Metals, Inc.*, 774 N.E.2d 71 (judgment on the evidence was error where plaintiff was fired and there may have been retaliatory motive); *see also* Webster's Third New International Dictionary 644 (1986) ("discharge" defined as "release[d] or dismiss[ed] . . . from . . . employment").

Davis argues the discharge requirement of a retaliatory discharge claim is also satisfied by evidence of demotion. We need not address that argument because Davis was neither fired nor demoted. Despite Davis's assertions to the contrary, her employment as the director ended on June 22, 2002, not by a unilateral act of the School Corporation or its employees, but rather pursuant to the terms of the third contract. In fact, Davis served as the director for the entire 2001-02 school year, after which both the position of director and the department ceased to exist. To state the matter simply, Davis signed a two-year employment contract with the School Corporation pursuant to which

she was to serve as the director of the department until June 22, 2002, which is precisely what occurred. Davis was given notice by at least October 19, 2001, that the Board was considering eliminating the department and the position of its director beginning with the 2002-03 school year, which it did on December 18, 2001. Davis's claim fails because she was not an at-will employee and she failed to designate materials that created a genuine issue of material fact that she was discharged or demoted, in retaliation or otherwise, and, therefore, the trial court did not err by entering summary judgment on that claim.

Davis next contends the trial court erred when it granted the defendants' summary judgment motion on her tortious interference claim. In order to establish a claim of tortious interference, a plaintiff must show: (1) the existence of a valid relationship; (2) the defendants' knowledge of the existence of the relationship; (3) the defendants' intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from the defendants' wrongful interference with the relationship. *AutoXchange.com, Inc., et al. v. Dreyer & Reinbold, Inc.*, 816 N.E.2d 40 (Ind. Ct. App. 2004).

Further, the Indiana Tort Claims Act governs lawsuits against political subdivisions and their employees, and provides substantial immunity for conduct within the scope of the employees' employment. *Celebration Fireworks, Inc. v. Smith*, 727 N.E.2d 450 (Ind. 2000). "'The purpose of immunity is to ensure that public employees can exercise the[] independent judgment necessary to carry out their duties without threat of harassment by litigation or threats of litigation over decisions made within the scope of

their employment.'" *Id.* at 452 (quoting *Ind. Dep't of Corr. v. Stagg*, 556 N.E.2d 1338, 1343 (Ind. Ct. App. 1990), *trans. denied*). A school corporation is a political subdivision. Ind. Code Ann. § 34-6-2-110(9) (West, PREMISE through 2006 2nd Regular Sess.). A lawsuit filed against an employee personally must allege that an act of the employee was, among others, "clearly outside the scope of the employee's employment[.]" I.C. § 34-13-3-5(c)(2).

Generally, conduct of the same general nature or incidental to the conduct authorized is within the scope of the employee's employment. *Bushong v. Williamson*, 790 N.E.2d 467 (Ind. 2003). An act is incidental to authorized conduct when it is subordinate or pertinent to an act that the employee is employed to perform, or when it is done to further the employer's business. *Id.* Generally, the determination of whether the tortious act of an employee is within the scope of his employment is a question of fact. *Id.* Under certain circumstances, however, the question may be determined as a matter of law. *Id.*

Haire is the assistant principal of the High School, and Sipes is the principal of the High School. Davis correctly contends we are not bound by Haire's and Sipes's conclusions that "at the time [they] wrote the letter[s] . . ., [they] w[ere] acting within the scope and course of [their] employment with the School Corporation." *Appellant's Appendix* at 83, 88. This is because "[a] statement in an affidavit in support of a motion for summary judgment that is no more than an opinion or a conclusion of law . . . is not sufficient to establish the facts necessary to show that no genuine factual issue exists that

would preclude summary judgment." *McMahan v. Snap On Tool Corp.*, 478 N.E.2d 116, 122 (Ind. Ct. App. 1985).

Nonetheless, "we may not as judges ignore what we know as [people] . . . ." *U.S. v. Maze*, 414 U.S. 395, 403 n.7 (1974). Haire, Sipes, and Davis were all employees of the School Corporation. Haire, as the High School's assistant principal, and Sipes, as the High School's principal, expressed concerns regarding Davis's professional performance as the director of student services. Haire's and Sipes's comments addressed a school-related subject (students' expulsion hearings) and related to Davis's role as the expulsion examiner (rather than, for example, Davis's personal life). There is no doubt the concerns expressed in Haire's and Sipes's letters regarding Davis's job performance were made within the scope of their employment as principal and assistant principal. *See Bushong v. Williamson*, 790 N.E.2d at 470 (under the circumstances, act of striking student "on the back, legs, and buttocks with his hand" was within the scope of elementary teacher's employment); *Kelley v. Vigo County Sch. Corp., et al.*, 806 N.E.2d 824, 830-31 (Ind. Ct. App. 2004) ("statements by the School Officials about [principal's] competence as a career educational administrator or past behavior as a career educational administrator fell squarely within the scope of their employment") (internal quotations omitted), *trans. denied*. The trial court, therefore, did not err when it entered summary judgment on this claim. *Bushong v. Williamson*, 790 N.E.2d 467.

Davis next contends the trial court erred when it entered summary judgment upon her breach of contract claim. The construction of a contract and an action for its breach are matters of judicial determination. *Fratus, et al. v. Marion Cmty. Sch. Bd. of Trustees*,

749 N.E.2d 40 (Ind. 2001). The elements of a breach of contract action are the existence of a contract, the defendant's breach thereof, and damages. *Gatto v. St. Richard Sch., Inc., et al.*, 774 N.E.2d 914 (Ind. Ct. App. 2002). When construing a contract, unambiguous contractual language is conclusive upon the parties and the courts. *S.C. Nestel, Inc. v. Future Constr., Inc.*, 836 N.E.2d 445 (Ind. Ct. App. 2005). If an instrument's language is unambiguous, the parties' intent is determined from the four corners of the instrument. *Id.*

If, however, a contract is ambiguous or uncertain, its meaning is determined by extrinsic evidence and its construction is a matter for the fact-finder. *Id.* When interpreting a written contract, the court should attempt to determine the parties' intent at the time the contract was made, which is ascertained by the language used to express their rights and duties. *Id.* The contract is to be read as a whole when trying to determine the parties' intent. *Id.* The court will make every attempt to construe the contractual language such that no words, phrases, or terms are rendered ineffective or meaningless. *Id.* The court must accept an interpretation of the contract that harmonizes its provisions as opposed to one that causes its provisions to conflict. *Id.*

Davis argues genuine issues of material fact exist regarding whether the School Corporation breached her employment contract because, as she asserts: (1) she had an automatic right to contract renewal; (2) she was discharged for unsatisfactory performance rather than due to a reduction in force; and (3) "the [d]efendants' failure to notify [her] of the temporary nature of her position caused her to leave a secure position with another school corporation with a comparable salary." *Appellant's Brief* at 27.

The renewal clauses Davis refers to are found in the Manual, and state:

3.713 . . . [S]upportive administrators[, which include the director (pursuant to § 3.302),] shall be employed under a regular teacher contract for a period of two (2) school years. . . . The individual contract for . . . supportive administrators shall be extended for another year, maintaining a two (2) year contract, unless the Board notifies the individual employee, not later than August 1, that []she is being placed on probation for the coming year . . . .

3.714 On or before January 1 of the year during which the contract of any . . . supportive administrator is due to expire, the Board or the Superintendent may give such staff member written notice of renewal or refusal to renew []her contract for the ensuing school year. Any such non-renewal notice shall be given in accordance with the terms of Section 3.721, below. *If no notice is given on or before January 1* of the year during which the staff member's contract is due to expire, *the contract then in force shall be reinstated* only for the ensuing school year.

3.720 Due Process

3.721 *If* a . . . supportive administrator is to be *placed on probationary status*, []she shall be informed of such placement *not later than August 1* of any school year. *It is not necessary for a decision to deny re-employment* of a . . . supportive administrator[] *for reasons other than failure to perform []her duties* in a satisfactory manner, *to be preceded by a probationary time period* for such staff member. Final notice of the decision not to re-employ any . . . supportive administrator in []her present position, for reasons relating to unsatisfactory performance of the duties of the position, shall be given to the employee not later than January 1 of any school year. The employee shall receive preliminary notice that the Board is considering a decision not to renew []her contract at least thirty (30) days prior to receiving notice that the Board has decided not to renew []her contract. The preliminary notice shall include a statement of the reasons for considering non-renewal and shall advise the staff member that []she is entitled to a private conference with the Superintendent, if a written request for such conference is filed with the Superintendent within five (5) days of receipt of the preliminary notice, and to a conference with the Board . . ., if such a conference is requested within five (5) days of the conference with the Superintendent.

> 3.722 *Notwithstanding* the terms of Section *3.721*, above, the *Board may reduce the number of supportive administrative positions . . . through a reduction in force decision* by giving the individual supportive administrators affected by such reduction written notice of the decision at least thirty (30) days prior to the date the reduction would become effective. Such a reduction in supportive administrative positions may result in such employee being transferred to another . . . supportive administrative opening, or to a position for which the affected employee is certified, or in placing such employee on layoff status.

Appellant's Appendix at 74-75 (emphases supplied, citations omitted).

We first address Davis's argument that she had an automatic right to contract renewal. According to section 3.302 of the Manual, the director is a supportive administrator. Pursuant to section 3.713, the contract of a supportive administrator shall be extended for one year, thereby maintaining a two-year contract, unless the Board notifies the supportive administrator by August 1 that she is being placed on probation. Section 3.714, however, states that the Board or the superintendent may give written notice to a supportive administrator by January 1 of the year during which the supportive administrator's contract is to expire that her contract will not be renewed, which notice shall comply with the requirements of section 3.721.

Section 3.721 clarifies these two seemingly inconsistent sections, and provides that if a supportive administrator is to be placed on probationary status, she shall be informed of such, *i.e.*, given notice, by August 1 (which is consistent with section 3.713); conversely, if the School Corporation declines to renew a supportive administrator's contract for any reason other than failure to perform her duties satisfactorily, notice of nonrenewal need only be given by January 1, rather than August 1. In the event notice of

nonrenewal is not given by January 1, the supportive administrator's contract is automatically renewed for one year. We now apply these provisions to Davis's case.

Davis was employed as the director and, thus, was a supportive administrator. As such, Davis had the right to an automatic one-year renewal of her contract *only* if the Board or the superintendent failed to provide her notice of nonrenewal by January 1, 2002, *i.e.*, January 1 of the year her contract was to expire, *unless* the Board was declining to renew her contract due to unsatisfactory performance. The designated evidence makes clear, and Davis implicitly concedes, that Cahill, the School Corporation's superintendent, informed her by at least November 20, 2001, that the Board intended to eliminate the position and, thereby, not renew her contract as the director. Further, the Board voted to eliminate the position of the director and not renew Davis's contract on December 18, 2001, which Cahill informed Davis of the following day. The designated evidence, therefore, inexorably leads to the conclusion that, under these circumstances, Davis had no right to the automatic renewal of her contract.

We next address whether the School Corporation breached the contract by failing to notify Davis by August 1 that it would decline to renew her contract due to unsatisfactory performance. This, of course, required that Davis demonstrate the existence of a genuine issue of material fact that the School Corporation declined to renew her contract because of unsatisfactory performance. If such was the case, the Board was required to provide her notice thereof by August 1, 2001.

In his affidavit, Cahill asserts that "after a review of the budgetary constraints faced by the [School Corporation], [he] made the decision in May of 2001 to recommend

to the [Board] that the Department . . . and the position of Director . . . be eliminated after the 2001-2002 school year." *Id.* at 58-59. This assertion is evidenced by the minutes of an administrative team meeting held on May 31, 2001, during which Cahill made the aforementioned recommendation. Specifically, the minutes stated:

> Dr. Cahill will be looking at each department in the [School] Corporation during the coming school year in terms of restructuring. He is currently working with the Student Services Staff. The 2001-02 [school year] will be a transition year, and beginning in 2002-03 there will be no Student Services Department. Employees in that department will be re-assigned to buildings or decentralized. Any changes regarding this coming year will be communicated by June 30, 2001. Dr. Cahill would like to meet with two representatives each from the elementary principals, secondary principals, and directors to discuss the Student Services issue.

Id. at 66. Further, the defendants' designated evidence included a letter sent to Davis from Cahill on November 20, 2001, which stated:

> the Superintendent's recommendation that your administrative contract be non-renewed is based solely upon the decision to reorganize and eliminate the Student Services Department; the recommendation in no way reflects upon your service to the School Corporation. We appreciate your contribution to the educational program, and we are sorry that this action is necessary.

Id. at 71. Additionally, the defendants' designated evidence included a second letter to Davis from Cahill dated December 19, 2001, which stated:

> On Tuesday, December 18, 2001, according to Board policy, the Board of School Trustees approved the elimination of the position of Director of Student Services and the non-renewal of your administrative contract. This action is effective at the end of your 2001-2002 administrative contract. The reasons the Board took this action are the systematic reorganization, decentralization and elimination of the Student Services Department.
>
> * * *

> As stated above, the decision that your administrative contract be non-renewed is based solely on the decision to reorganize and eliminate the Student Services Department. It in no way reflects upon your service to the School Corporation. We appreciate your contribution to the educational program, and we are sorry that this action is necessary.

Id. at 76.

Despite this designated evidence, Davis contends the School Corporation declined to renew her contract because of Haire's and Sipes's letters regarding their concerns about her unprofessional demeanor and uncooperativeness. As previously noted, Haire's and Sipes's letters were sent on August 16 and August 23, 2001, respectively, approximately two and one-half months after Cahill decided to recommend the elimination of the department and the position of its director. Davis designated no evidence other than these letters that demonstrates the School Corporation declined to renew her contract for any reason other than reorganization and elimination of the department. We note Davis was not replaced as the director, there is no designated evidence that the School Corporation subsequently reformed the department or reappointed a director of student services, and Davis remains employed by the School Corporation. In light of the designated evidence, there is no genuine issue of material fact that the School Corporation declined to renew Davis's contract for any reason other than reorganization and the elimination of the department and, accordingly, the School Corporation was not required to notify Davis of its decision not to renew her contract by August 1. The trial court, therefore, did not err in entering summary judgment for this reason.

Davis's final argument regarding her breach of contract claim is the defendants failed to notify her of the temporary nature of her position, and that "[t]his utter indecency was a violation of the [School Corporation's] fairness law, and therefore, [sic] was a violation of her employment contract." *Appellant's Brief* at 27. In support of this argument, Davis cites sections 10.113 and 10.162 of the Manual. Those sections state that "all employees are entitled to be treated with courtesy, fairness, and decency[,]" and the "Board . . . and the . . . School Corporation shall provide a place of employment that is fair and just[.]" *Id.*

We begin by noting that the basis for Davis's argument is her assertion that "Cahill made [the] decision [to eliminate her position] before he hired [] [her]." *Id.* In support of this assertion, Davis cites only her husband's and her affidavits, which contain identical claims. Nonetheless, the facts most favorable to Davis are that Cahill intended to eliminate Davis's position before he hired her, Davis's contract obligated the School Corporation to employ her as the director of the department until June 22, 2002, unless one of the conditions contained in the Manual, such as reduction in force, was met, and Davis had a conditional right to have her contract renewed (the condition being that if the School Corporation failed to notify her by January 1 that it would decline to renew her contract, her contract would be renewed for one year). We note Davis does *not* assert: Cahill informed her he intended not to eliminate her position; anyone informed her that her employment was to be permanent; or she entered employment with the School Corporation with an expectation that it would be permanent or communicated such an

expectation to the School Corporation. Further, Davis cites no authority in support of her argument.

Simply stated, the School Corporation promised to employ Davis as the director until June 22, 2002, at the agreed upon salary, and the School Corporation was not contractually required to inform Davis of its ponderings regarding the permanency of the position that she temporarily occupied. Davis's argument, therefore, fails. *See Gatto v. St. Richard Sch., Inc., et al.*, 774 N.E.2d at 921 (upon appeal from entry of summary judgment, "school's failure to give written notice [did] not support a breach-of-contract claim" because "school was not contractually required to provide written notice before terminating [school employee's] employment").

In summation: (1) Davis did not have an automatic, unconditional right to the renewal of her contract; (2) the School Corporation did not decline to renew Davis's contract due to unsatisfactory performance and, therefore, it was required to provide her notice of nonrenewal by January 1, 2002 (rather than August 1, 2001), which it did; and (3) the School Corporation was not contractually required to inform Davis of its plans regarding the department. The trial court, therefore, did not err in entering summary judgment upon Davis's breach of contract claim.

Davis's next contention is that the trial court erred when it entered summary judgment upon her claim of fraud. The particular species of fraud that Davis alleged was constructive fraud. The elements of a constructive fraud claim are: (1) a duty owed by a charged party to a complaining party resulting from their relationship; (2) a violation of that duty by the charged party by making deceptive, material misrepresentations of past

or existing facts, or remaining silent when a duty to speak exists; (3) reliance thereon by the complaining party; (4) injury to the complaining party as a proximate result thereof; and (5) an advantage gained by the charged party at the expense of the complaining party. *Wright v. Pennamped, et al.*, 657 N.E.2d 1223 (Ind. Ct. App. 1995), *reh'g denied with opinion to clarify on other grounds*, 664 N.E.2d. 394 (Ind. Ct. App. 1996), *trans. denied*. In a fraud case, defendants are entitled to summary judgment if they demonstrate the undisputed material facts negate at least one element of the plaintiff's claim. *Brougher Agency, Inc., et al. v. United Home Life Ins. Co.*, 622 N.E.2d 1013 (Ind. Ct. App. 1993), *trans. denied*.

According to Davis, the source of the School Corporation's duty is section 10.162 of the Manual, which requires "agents and/or employees of the school corporation to treat employees *and members of the community* with courtesy, fairness, and decency; further, a provision of the manual states that '[r]espect for the dignity and worth of every member of the school community *must be recognized and promoted* in the [School Corporation].'" *Appellant's Brief* at 29 (emphases and alteration in original). To paraphrase Davis's allegation: (1) the School Corporation owed her a duty of fairness; (2) it violated that duty by failing to inform her that it decided to eliminate the department before it hired her; (3) she relied upon the "permanence" of her position when she ended her previous employment, which was as the director of student services at Jeffersonville High School, *id.* at 30; (4) as a result of her reliance, she lost the enjoyment of an administrative career in student services; and (5) the School Corporation "gained an advantage to [] Davis'[s] detriment by luring [] Davis from a secure position in order to

use her services until such time as they no longer needed her." *Id.* We address only Davis's assertions regarding reliance and resulting harm.

In support of her contention, Davis directs our attention to *Romack v. Pub. Servs. Co. of Ind.*, 511 N.E.2d 1024 (Ind. 1987), *reh'g denied*, which she asserts is factually identical. Our Supreme Court stated the facts in *Romack* as follows:

> In 1977, Romack applied for the position of Corporate Security Manager at PSI but did not receive the position. However, two years later, PSI contacted Romack concerning an available position. At that time, Romack was a Captain of the Indiana State Police with twenty-five years of service to his credit. Romack informed PSI that he had "permanent employment" with the State Police and would not consider leaving his position there unless the new job offered the same "permanency" of employment, advancement and benefits. An employee of PSI told Romack that if he came to work for PSI, he would have "such permanent employment." With these assurances, Romack terminated his employment with the Indiana State Police and began working for PSI on September 24, 1979 as an Operations Security Supervisor at the Marble Hill Nuclear Generating construction site.
>
> As a result of his employment with PSI, Romack purchased a house trailer and rented a tract of land near his place of employment. Later, Romack purchased a home in that locality and moved his family to the area. PSI requested that Romack take this action so he and his family would "become a part of the community." Romack was reimbursed for the relocation costs occasioned by the first move in 1979 pursuant to PSI policy. In January of 1981, Romack sought reimbursement for the relocation costs associated with moving his family to the area. These expenses were reimbursed in February of 1981 and PSI also paid the cost of having a moving company transport Romack's household goods to the new home. The total amount paid or reimbursed by PSI was approximately $4,694.72.
>
> On July 30, 1982, Romack was discharged by PSI. Romack requested that he be given a position elsewhere in the company because he was 52 years old and suffering from a work-related back injury. His request was denied because PSI thought it would be better if a "clean break" was made. Romack subsequently filed this action asserting that he was terminated because his attempts to deal with bomb threats and alcohol

> and drug problems at the construction site were slowing down the work progress and costing PSI additional money because of delays. Romack also asserted that he was not an employee at will and had been unlawfully discharged. PSI moved for summary judgment on all of Romack's claims and the trial court granted the motion.

Id. at 1025. Based upon these facts, our Supreme Court "adopt[ed] and incorporate[d] by reference the separate opinion of Judge Conover" in *Romack v. Pub. Servs. Co. of Ind.*, 499 N.E.2d 768 (Ind. Ct. App. 1986) (Conover, J., dissenting).

In his dissenting opinion, Judge Conover concluded "an employer cannot arbitrarily fire an employee when (1) the employer knows the employee had a former job with assured permanency (or assured non-arbitrary firing policies) and (2) was only accepting the new job upon receiving assurances the new employer could guarantee similar permanency." *Id.* at 778. Based upon these conclusions, Judge Conover stated:

> Romack had a viable cause of action based upon constructive fraud, in addition to others. He was lured from his former position by assurances of permanent employment. He was fired for competently performing the precise job he was hired to do. Such action by PSI is not only unconscionable, it also strikes at the heart of a problem constructive fraud was meant to address.

Id.

It is clear from Judge Conover's dissent that the presence of the following three facts are essential to his opinion: (1) the complainant had a job with assured permanency or non-arbitrary firing policies; (2) the charged employer knew of the complainant's permanency or the complainant's former employer's non-arbitrary firing policies; and (3) the complainant only accepted new employment based upon the charged employer's assurances of similar permanency. *Romack v. Pub. Servs. Co. of Ind.*, 499 N.E.2d 768

(Conover, J., dissenting). Davis did not designate any evidence demonstrating these three facts. The only designated evidence that touches upon the subject of permanence is Davis's unsupported assertions, such as: "My job with Greater Clark County Schools [] was secure and stable." *Appellant's Appendix* at 130.

Davis failed to include in her designated evidence anything that created a genuine issue regarding these facts. Further, there is nothing in any of her three employment contracts that would have led Davis to believe her position as director was intended to be permanent. Regarding the length of her employment, Davis's employment contracts, subject to the possibilities of termination for cause, reduction in force, and renewal, promised only that the School Corporation would employ her until June 22, 2002, which it did. Davis failed to designate evidence sufficient to create a genuine issue of material fact regarding reliance and, therefore, the trial court did not err when it entered summary judgment upon her claim of constructive fraud.

Finally, Davis contends the trial court erred when it entered summary judgment upon her defamation claim. There are four elements to a defamation claim: (1) defamatory imputation; (2) malice; (3) publication; and (4) damages. *Trail v. Boys & Girls Clubs of Nw. Ind., et al.*, 845 N.E.2d 130 (Ind. 2006). Defendants in a defamation case are entitled to summary judgment if they demonstrate that the undisputed material facts negate at least one element of the plaintiff's claim. *Shine v. Loomis*, 836 N.E.2d 952 (Ind. Ct. App. 2005), *trans. denied*.

Davis's defamation claim is based upon the following statements in Haire's and Sipes's letters:

1. "[Davis] became very upset and began yelling at me over the phone. . . . [S]he was very unprofessional and [] her tone was uncalled for";

2. "[Davis] became loud and belligerent to me . . .";

3. "I [(Haire)] am . . . asking to be treated as a colleague in a professional manner, not 'yelled at' and 'talked down to' because of someone else's frustration"; and

4. "I [(Sipes)] concur with [Haire's] depiction of the problems he is experiencing."

Appellant's Appendix at 144, 145, 146.

Even assuming *arguendo* these statements have defamatory imputations and are malicious, Davis failed to designate evidence creating a genuine issue of material fact that damages resulted therefrom. Davis's "claimed harm is the moment when the School Board terminated her employment as Director of Student Services . . . ." *Appellant's Brief* at 40. She alleges no other resulting damage. As we concluded above, the School Corporation declined to renew Davis's contract because of reorganization and elimination of the department rather than, as Davis alleges, Haire's and Sipes's comments. This conclusion is supported by the timing of Haire's and Sipes's comments (*i.e.*, they were made well after Cahill announced his intention to recommend the elimination of the department) and the consistent repetition with which Cahill and others informed Davis that the School Corporation would decline to renew her contract for reasons unrelated to her job performance. Absent any genuine issue of material fact regarding the element of damages, Davis's defamation claim fails and, therefore, the trial court did not err by entering summary judgment on this claim. *See Shine v. Loomis*, 836 N.E.2d at 960 ("the trial court erred in concluding that a genuine issue of material fact existed on the question

of actual malice [and] we reverse and remand with instructions [to] grant [the] summary judgment motion").

Affirmed.

KIRSCH, C.J., and RILEY, J., concur.